SME Aerospace Sdn Bhd v Steyr Mannlicher (M) Sdn Bhd

HIGH COURT (SHAH ALAM) — SUIT NO MT3–22–425 OF 2005
ROSNAINI SAUB JC
22 DECEMBER 2005

Landlord and Tenant — Rent — Non-payment — Landlord locked up the property and deny access to tenant — Whether landlord can recover possession without a court order — Whether equitable law remedy of self-help available to landlord — Specific Relief Act 1950 ss 7 & 8

By a tenancy agreement dated 9 December 2004 entered between the defendant and the plaintiff, the defendant agreed to rent a property to the plaintiff for a period of seven months commencing on 1 August 2004 and ending on 28 February 2005 at a rental rate of RM200,000 per month. The plaintiff is in default of payment of the rent for the months of January and February 2005 but has remained in possession and occupation of the property where it was issued with a license to manufacture deal and repair and store arms in the property by the Ministry of Internal Security. Therefore, the plaintiff continued to be in possession of the property even after the expiry date of the tenancy. On 6 May 2005, the defendant locked-up the property and thereby denying plaintiff access to the property and effectively evicted the plaintiff from the property. The only relevant issue that needs determination is whether the action of the defendant in locking up the property and denying access to the plaintiff is lawful and/or done according to the law. It is the contention of the learned counsel for the plaintiff that the action of the defendant in this case is in contravention of s 7 of the Specific Relief Act 1950 ('the Act').

Held:

(1) The requirement for the defendant to first and foremost obtain a court order before it can recover possession of the property from the plaintiff is a mandatory one. The used of the word 'shall' in s 7(2) of the Act imposes a pre-condition of obtaining a court order before the defendant can recover possession of the property. The plaintiff was a tenant of the defendant and therefore he could not be said to be a trespasser. Neither was the plaintiff a licensee.

(2) The plaintiff in not yielding up possession of the property after the expiry of the tenancy period was therefore a tenant holding-over and there were existing remedies in law available to the defendant against such tenant. Furthermore, s 7(2) of the Act is applicable in cases where 'the property has been let under a tenancy, and that tenancy is determined or has come to an end'. That was exactly what had happened in this case.

(3) The defendant in this case had resorted to the equitable remedy of self-help to recover the possession of the property from the plaintiff. As decided in *Dr Harjit Singh v Suhaimi bin Samat & Anor* [1995] 2 AMR 1988, the act of the defendant in locking out the plaintiff amounted to a tort. It is now settled law that with the existence of s 7(2) of the Act in its current form, the equitable remedy of self-help has been relegated into oblivion. The law does not allow the defendant to take the law into his own hand and forcibly evict the plaintiff from the property.

(4) As the defendant had failed to obtain a court's order for recovery of vacant possession, s 8(1) of the Act reinforced the right of a person who had been wrongfully dispossessed of an immovable property 'otherwise than in due course of the law' to obtain repossession of the building and the land.

[Bahasa Malaysia summary

Melalui satu perjanjian penyewaan bertarikh 9 Disember 2004 di antara defendan dan plaintif, defendan bersetuju menyewa satu premis kepada plaintif untuk tempoh tujuh bulan bermula dari 1 Ogos 2004 dan berakhir pada 28 Februari 2005 pada kadar sewa sebanyak RM200,000 sebulan. Plaintif telah ingkar membayar untuk bulan-bulan Januari dan Februari 2005 dan telah terus menduduki dan memiliki premis tersebut di mana ia telah diberikan satu lesen membuat mengedar dan membaiki dan menyimpan senjata di premis tersebut oleh Kementerian Keselamatan Dalam Negeri. Dengan itu, plaintif telah terus menduduki premis tersebut walaupun selepas tempoh tamat penyewaan tersebut. Pada 6 Mei 2005, defendan mengunci premis tersebut dan dengan ini menafikan plaintif akses ke premis tersebut dan secara kesannya mengusir plaintif dari premis tersebut. Isu yang relevan yang perlu diputuskan ialah sama ada perbuatan defendan dalam mengunci premis tersebut dan menafikan plaintif akses adalah dibenarkan dan/atau sah di sisi undang-undang. Ia adalah pendapat peguam cara plaintif bahawa perbuatan defendan dalam kes ini melanggar s 7 Akta Relief Spesifik 1950 ('Akta tersebut').

Diputuskan:

(1) Perlunya defendan untuk pertama sekali memperoleh satu perintah mahkamah sebelum ia boleh mendapatkan semula premis tersebut daripada plaintif adalah mandatori. Pemakaian perkataan 'shall' di s 7(2) Akta tersebut mengenakan satu pra-syarat untuk memperoleh satu perintah mahkamah sebelum defendan dapat mengambil semula premis tersebut. Plaintif adalah penyewa defendan dan tidak boleh dikatakan penceroboh. Plaintif juga bukan seorang pemegang lesen.

(2) Plaintif dalam tidak memberi balik milikan premis selepas akhirnya tempoh penyewaan adalah penyewa yang memegang lepas masa dan terdapat remedi yang sedia ada di bawah undang-undang kepada defendan terhadap penyewa sebegitu. Bahkan, s 7(2) Akta tersebut terpakai dalam kes-kes di mana

'the property has been let under a tenancy, and that tenancy is determined or has come to an end'. Ini adalah apa yang berlaku di dalam kes ini.

(3) Defendan di dalam kes ini menggunakan remedi ekuiti 'self-help' untuk mendapat balik milikan premis tersebut daripada plaintif. Seperti yang diputuskan di dalam kes *Dr Harjit Singh v Suhaimi bin Samat & Anor* [1995] 2 AMR 1988, perbuatan defendan mengunci plaintif membentuk satu tort. Ia adalah kini suatu ketetapan undang-undang bahawa dengan adanya s 7(2) Akta tersebut dalam keadaannya sekarang, remedi ekuiti 'self-help' telah diketepikan. Undang-undang tidak membenarkan defendan mengambil tindakan secara tersendiri dan memaksa plaintif keluar daripada premis tersebut.

(4) Oleh kerana defendan gagal memperoleh perintah mahkamah untuk mendapat balik milikan kosong premis tersebut, s 8(1) Akta tersebut memperkukuhkan hak seseorang yang telah dirampas secara tidak sah hak miliknya 'otherwise than in due course of the law' untuk mendapat pemilikan semula bangunan dan tanah tersebut.]

Notes

For cases on non-payment of rent, see 9 *Mallal's Digest* (4th Ed, 2002 Reissue) paras 1352–1353.

Cases referred to

Dr Harjit Singh v Suhaimi bin Samat & Anor [1995] 2 AMR 1988 (refd)
Errinaton v Errinaton & Anor [1952] 1 All ER 149 (refd)
MBF Holdings Bhd v East Asiatic Co (Malaysia) Bhd [1995] 3 MLJ 49 (refd)
Nur Islam Wordwide Industries Sdn Bhd v Yee Kok Sum [2001] 7 CLJ 495 (refd)

Legislation referred to

Specific Relief Act 1950 ss 7, 7(2), 8(1)
Companies Act 1965

Mohamed Zaini Hj Mazlan (Gideon Tan Razali Zaini) for the plaintiff.
Gopal Sreenevasan (Leong Phaik Leng with him) (Sivananthan) for the defendant.

Rosnaini Saub JC:

[1] The plaintiff has, simultaneously with the filing of the writ of summons and statement of claim against the defendant, filed a summons in chambers dated 17 May 2005 supported by an affidavit of Lt Kol (R) Ahmad Marzuki bin Ahmad Nawawi, the General Manager of the Precision Engineering Division of the plaintiff. The plaintiff is in the business of producing and manufacturing firearms and ammunition.

[2] The defendant is a joint venture company set-up and incorporated in Malaysia under the Companies Act 1965 pursuant to a joint-venture agreement between

National Aerospace & Defence Industries Bhd ('NADI'), a local company, and Steyr Mannlicher Holding GMBH ('Steyr'), a company incorporated in Austria. Steyr is a company that manufactures small arms under the 'Steyr Mannlicher' trademark. NADI is the majority shareholder of the plaintiff.

[3] By this summons in chambers, the plaintiff is praying for the following orders:

(a) that the defendant, whether through its employees, servants, agents or otherwise howsoever, be restrained from locking the one-storey factory ('the property') situated at Lot 14643 PT1952, Mukim of Sungai Buluh, District of Petaling Jaya, State of Selangor Darul Ehsan ('the land') and denying access to the plaintiff whether through its employees, servants, agents or otherwise howsoever;

(b) that the defendant, whether through its employees, servants, agents or otherwise howsoever, allow the plaintiff and its employees, servants, agents or otherwise howsoever, access to and peaceful enjoyment of the land and the property.

[4] The grounds for the plaintiff's application herein are that the defendant had wrongfully and illegally evicted and barred the plaintiff from the property and as contained in its affidavit in support.

[5] I pause here for a moment to state that the factual background that leads to the dispute between the parties herein are indeed complicated, lengthy and intriguing and I think has been elaborately narrated in all the affidavits filed by both parties. To add further intrigue to the suit, the defendant has now filed a counter-claim not only against the plaintiff but against three other parties. No doubt that all the issues involved will be determined in due course at the trial proper of the action. For the moment, suffice to say that all is not well between the joint-venture partners.

[6] However, the more pertinent and relevant fact for the purpose of this summons in chambers is that by a tenancy agreement dated 9 December 2004 entered between the defendant and the plaintiff, the defendant agreed to rent the property to the plaintiff for a period of seven months commencing on 1 August 2004 and ending on 28 February 2005 at a rental rate of RM200,000 per month. The plaintiff is in default of payment of the rent for the months of January and February 2005 but has remained in possession and occupation of the property where it produces and manufactures 'AUG Rifles'. Further, the plaintiff's Chief Executive Officer, Lt Kol (R) Ir Chee Eng Boon was issued with a license dated 12 January 2005 to manufacture deal, and repair and store arms in the property by the Ministry of Internal Security. Therefore, the plaintiff continued to be in possession of the property even after the expiry date of the tenancy.

[7] Then on 6 May 2005, the defendant locked up the property and thereby denying plaintiff access to the property and effectively evicted the plaintiff from the

property. I must state that the defendant on the other hand avers, in one of the four affidavits filed on its behalf in opposing the plaintiff's application, that the plaintiff has actually surrendered possession of the property to the defendant on 28 February 2005, ie the date the tenancy period expires. However, after perusing the affidavits filed, I find that such averment is not supported by the sequence of events that follows, especially the issuance of a letter dated 3 May 2005 by the defendant and plaintiff's letter to the defendant dated 4 May 2005 exhs A-11 at pp 83–84 of the plaintiff's affidavit 1) which clearly indicate that the plaintiff has not given up possession of the property.

[8] I have given due consideration to the written submissions handed in by counsel for both parties and it is my considered opinion that the only relevant issue that needs determination is whether the action of the defendant in locking up the property and denying access to the plaintiff is lawful and/or done according to the law. It is the contention of the learned counsel for the plaintiff that the action of the defendant in this case is in contravention of s 7 of the Specific Relief Act 1950 ('the Act'). Section 7 of the Act provides as follows:

> 7. Recovery of specific Immovable property.
>
> (1) Subject to subsection (2), a person entitled to possession of specific immovable property may recover it in the manner prescribed by law relating to civil procedure.
>
> (2) Where a specific immovable property has been let under a tenancy, and that tenancy is determined or has come to an end, but the occupier continues to remain in occupation of the property or part thereof, *the person entitled to the possession of the property shall not enforce his right to recover it against the occupier otherwise than by proceedings in court.*
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> (3) In subsection (2) 'occupier" means any person lawfully in occupation of the property or part thereof at the termination of the tenancy.' (Emphasis added.)

[9] Section 7(2) of Act clearly prohibits the defendant in this case from taking over the possession of the said property from the plaintiff without first obtaining a court order. In a case with almost similar facts to our present case, Zulkefli J (as he was then) in *Nur lslam Wordwide Industries Sdn Bhd v Yee Kok Sum* [2001] 7 CLJ 495 at p 497 had these to say:

> Saya mendapati tindakan pihak defendan memasuki dan menutup premis yang diduduki oleh plaintif pada masa yang berkenaan adalah salah, tidak sah dan tidak dibuat mengikut kuasa undang-undang. Sungguhpun terdapat peruntukan kl. 4(a) perjanjian sewaan yang dimasukki diaritara plaintif dengan defendan yang membolehkan defendan mendapatkan pemilikan semula premis tersebut, saya berpendapat ianya tidak boleh mengatasi peruntukan undang-undang dibawah *s 7(2) Specific Relief Act 1950* dan Akta Distress 1951 *yang menghendaki tindakan Mahkamah diambil atau perintah Mahkamah diperolehi sebelum pihak defendan mengambil semula milikannya.* (Emphasis added.)

[10] The learned judge then went on to hold that the defendant in that case had failed to comply with the requirement of s 7(2) of the Act and granted the relief sought by the plaintiff.

[11] In *Dr Harjit Singh v Suhaimi bin Samat & Anor* [1995] 2 AMR 1988, the plaintiff in that case commenced an action against the defendants contending that the conduct of the defendants in locking him out of the premises amounted to a breach in tort in contravention of s 7 of the Act. The plaintiff in that case then subsequently filed a summons in chambers for an order of injunction against the defendants. Justice Haidar (as he was then) at pp 1991–1992 opined as follows:

> … it would be wrong on the part of the defendants to lock out the plaintiff from the clinic and thereby taking the law into their own hands. Such an act amounted to a tort. Section-7(2) of the Specific Relief Act 1950 clearly showed the intention of Parliament that possession of premises may not be obtained except by proceedings in the court. If the court were to refuse the injunction, leaving the plaintiff to a remedy for tort, it would be allowing just the mischief which the section was designed to prevent. As Stamp J said at p 1116 in *Warder*'s case [1970] 1 All ER 1112:
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> > If the matter had come before the court on a threat to lock out the first plaintiff, I entertain no doubt that an injunction would have been granted, And to quote Lord Denning MR in the *Luganda* case, 'They should not be in a better position by wrongfully locking him out'.

[12] In my judgment, the requirement for the defendant in our present case to first and foremost obtain a court order before it can recover possession of the properly from the plaintiff is a mandatory one. The used of the word 'shall' in s 7(2) of the Act imposes a pre-condition of obtaining a court order before the defendant can recover possession of the property. The said s 7(2) of the Act is clearly applicable to this case. The plaintiff was a tenant of the defendant and therefore he cannot be said to be a trespasser. Neither the plaintiff is a licensee as it is argued by the defendant's learned counsel. It is also in evidence that the plaintif has been in occupation of the property since the month of August 2002 to carry out its business.

[13] The plaintiff in not yielding up possession of the property after the expiry of the tenancy period is therefore a tenant holding-over and there are existing remedies in law available to the defendant against such tenant. Furthermore, s 7(2} of the Act is applicable in cases where 'the property has been let under a tenancy, and that tenancy is determined or has come to an end'. That is exactly what has happened in this case. Therefore, the learned counsel for the defendant reliance on the case of *Errinaton v Errinaton & Anor* [1952] 1 All ER 149 is misconceived as that case dealt with a licensee; and so are the other cases referred to and relied by the learned counsel in respect of the right of landowner against a trespasser. Those cases are irrelevant to the issue at hand.

[14] In my view, the defendant in this case has resorted to the equitable remedy of self-help to recover the possession of the property from the plaintiff. As decided by Justice Haidar in *Dr Harjit Singh*'s case, the act of the defendant in locking out the plaintiff amounted to a tort. It is now settled law that with the existence of s 7 (2) of the Act in its current form, the equitable remedy of self-help has been relegated into oblivion. The law does not allow the defendant to take the law into his own hand and forcibly evict the plaintiff from the property. As Abdul Malik Ishak J, per curiam, said at p 302 in the case of *Er Eng Hong & Anor v New Kim Eng Dan*

Tiap-Tiap Pemegang Yang Menduduki Atas Sebahagian Tanah Yang Dikenali Sebagai HS (M) 2162 PTD 4403 Mukim Benut, Daerah Pontian [2000] 1 CLJ 289:

> … The amended s 7(2) of the Specific Relief Act 1950 (Act 137) which came into force on 31 January 1992 by Act A 811 would relegate the remedy of self help into oblivion as the owner of the property can only seek to enforce his right to recover his property from the occupier by way of a court action."

[15] The plaintiff's counsel has also referred to s 8(1) of the Act to argue that the plaintiff is entitled to obtain repossession of the building and the land as the defendant has failed to obtain a court's order for recovery of vacant possession. Section 8(1) of the Act provides:

> 8. Suit by person dispossessed of immovable property.
>
> (1) If any person is dispossessed without his consent of immovable property otherwise than in due course of law, he or any person claiming through him may, by suit, recover possession thereof, notwithstanding any other title that may be set up in the suit.

[16] Having perused s 8(1) of the Act, I am inclined to agree with the learned counsel for the plaintiff. The said s 8(1) reinforced the right of a person who has been wrongfully dispossessed of an immovable property 'otherwise than in due course of the law'. In *Pollock & Mulla on Indian Contract And Specific Relief Acts*, (11th Ed) Vol II, the authors at p 1221 wrote:

> A suit under s 6 (which is substantially in pari materia with our s 8 of the Act) is maintainable between landlord and tenants where the question of title is not raised because the question of title is irrelevant and the defendant cannot raise it.
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> Though a tenant may hold over after the expiry of the period of tenancy, his possession is still juridical, and he is entitled to sue his landlord for possession under this section, if forcibly dispossessed by him.

[17] Applying the principles of law that I have alluded to above to the facts of the present case, I found that the defendant has clearly acted in contravention of s 7(2) of the Act. The plaintiff here is only praying for the order for injunctions and costs against the defendant and is not claiming any damages. So there is no need for me to order any assessment of damages.

[18] One final point that needed consideration is the defendant's counsel submission that the injunctions prayed for by the plaintiff herein are mandatory in nature and quoted the case of *MBF Holdings Bhd v East Asiatic Co (Malaysia) Bhd* [1995] 3 MLJ 49 to support his submission that before this court grant a mandatory injunction, there must be a high degree of assurance that at the trial it will appear that the injunction was rightly granted. The short answer to this submission is that it is immaterial whether the injunctions prayed for are mandatory or preventive in nature. Furthermore, the injunctions herein prayed for are no different in substance from those granted by the courts in *Nur-Islam Wordwide Industries* case and in *Dr Harjit Singh*'s case.

A **[19]** In the circumstances and for the reasons adumbrated above, I hereby made order in terms as prayed by the plaintiff in this summons in chambers (encl 3).

Order accordingly.

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Reported by Sally Kee

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